IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2692 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW BANK OF INDIA

Versus

A'BAD MUNICIPAL CORP.

Appearance:

1. Special Civil Application No. 2692 of 1982
NOTICE UNSERVED for Petitioner No. 1
MR MG NAGARKAR for Respondent No. 1-2
M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 17/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction declaring the definition of Annual Letting Value in Section 2 (1A) read with Section 2 (54) of the Bombay Provincial Municipal Corporations Act, 1949 and Rule 7 of the Taxation Rules in Chapter VIII of Schedule 'A' to the Act as ultra vires the State Legislature and offending against the provisions of Article 14 and Entry No. 49 in the State List in the VIIth Schedule to the Constitution of India. The petitioner has also prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash the entries of Gross Rateable Value made by the respondents in their assessment book for the official year 1981-82 and the relevant Appellate Order in respect of the premises bearing F.P.No. 187/A/2 of Ward Ellisbridge 'A'-I, T.P. Scheme 3, Ahmedabad as also the bills, demand notice, etc., issued in pursuance thereof. The petitioner has further prayed to issue an appropriate writ, direction or order to the respondents to refund with interest to the petitioner such amount of tax as was illegally and excessively levied and collected by the respondents from the petitioner for the official year 1981-82.

2. The petitioner is a Nationalized Bank under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at New Delhi. The petitioner wanted to start its Branch Office in the City of Ahmedabad. The petitioner came to know that some portion on the first floor of the Motor Sales and Service Building, near La Gajjar Chambers on Ashram Road was to be let out. It, therefore, negotiated with the landlords of the said building. The petitioner agreed to take a portion of the first floor of the said building on a monthly rent of Rs.2,500/- and started occupation of the premises with effect from July 15, 1977. The area in possession of the petitioner was 1403 sq.ft. The respondent Nos.1 and 2 assessed the premises occupied by the petitioner by fixing Gross Rateable Value at Rs.40,530/- for the official year 1981-82. The Gross Rateable Value was worked out by the respondent Corporation by adding the amount of property tax at the rate of 39% (30% General Tax plus 4% Water Tax plus 5% Conservancy Tax) to the basic annual rent. The petitioner filed complaint against the said Gross Rateable Value on June 2, 1981. The Appellate Officer confirmed the Gross Rateable Value by his order dated

September 17, 1981. According to the petitioner, the definition of "Annual Letting Value" as given in Section 2 (1A) read with Section 2 (54) of the Bombay Provincial Municipal Corporations Act and Rule 7 of the Taxation Rules in Chapter VIII of Schedule 'A' to the Act is ultra vires the State Legislature and offending against the provisions of Article 14 and Entry No. 49 in the State List in the VIIth Schedule to the Constitution of India for the reasons stated in the petition. Under the circumstances, the petitioner has filed instant petition and claimed the reliefs to which reference is made earlier.

3. It may be stated that earlier the petitioner was represented by its learned lawyer Mr. N.J. Modi and on his sad demise a notice was issued to the petitioner calling upon the petitioner to make necessary arrangement for its appearance in the matter either through an authorized officer or through a lawyer. The said notice could not be served on the petitioner and has returned unserved with the remark that the bank has been closed. Having regard to the facts of the case, the Court proceeds to decide the petition on merits.

4. The constitutional validity of Section 2 (1a) (aa) and (aaa) of the Bombay Provincial Municipal Corporations Act, 1949 with reference to the provisions of Articles 14 to 65 and 300-A of the Constitution of India has been upheld by the decision of the Division Bench rendered in Bannett Coleman & Co. Ltd. v. The Municipal Corporation of the City of Ahmedabad and others, 1996 (1) GLH 97.

5. For the reasons mentioned by the Division Bench in Bannett Coleman & Co. Ltd. (supra) the first prayer made by the petitioner to issue a writ of certiorari or any other appropriate writ, order or direction declaring the definition of Annual Letting Value in Section 2 (1A) read with Section 2 (54) and Rule 7 of the Taxation Rules in Chapter VIII of Schedule 'A' to the Act is ultra vires the State Legislature and offending against the provisions of Article 14 and Entry No.49 in the State List in the VIIth Schedule to the Constitution of India cannot be granted and is hereby rejected.

6. The case of the petitioner that while determining the Annual Letting Value, Municipal Taxes paid by the tenant to the Corporation cannot be included in the Annual Letting Value and, therefore, the prayers made in the petition should be granted, cannot be accepted. In Municipal Corporation of the City of Ahmedabad v. Canara

Bank, 1992 (2) GLR 1086, the Full bench of this Court has taken the view that where Municipal Taxes are paid by the tenant directly to the Corporation, the tenant cannot contend that the amount of Municipal Taxes cannot be included in the Annual Letting Value. Further the view taken by the Full Bench has been followed by the Division Bench in Bannett Coleman & Co. Ltd. (supra) which has upheld the provisions of the Bombay Provincial Municipal Corporations Act, 1949 relating to Annual Letting Value of a property. Therefore, the plea that the Municipal taxes paid by the petitioner could not have been included while determining the Annual Letting Value and, therefore, the reliefs claimed in the petition should be granted, has no substance and is hereby rejected.

7. Further the stand of the respondent Corporation that where in respect of any premises the standard rent is not fixed, the annual rent received by the owner shall be deemed to be the annual rent for which such building might reasonably be expected to let, is vindicated by the Supreme Court in Assistant General Manager, Central Bank of India v. Commissioner, Municipal Corporation for the City of Ahmedabad and others, 1995 (2) GLR 1189.

8. On over all view of the matter, this court is satisfied that the action of the respondents in determining the Gross Rateable Value cannot be regarded as illegal or arbitrary. The petition is, therefore, liable to be dismissed.

9. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no orders as to cost.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

(karan)